

REMARKS

In the Office Action¹, the Examiner rejected claims 1, 7, 14-19, and 21-28 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,794,207 to Walker et al. ("Walker '207") and U.S. Patent No. 6,598,026 to Ojha et al. ("Ojha") in view of U.S. Patent No. 5,862,223 to Walker et al. ("Walker '223"). The Office Action mentions claims 13 and 20. However, Applicant canceled claims 13 and 20 in an Amendment filed on August 1, 2006.

Applicant respectfully traverses the rejection of claims 1, 7, 14-19, and 21-28. Independent claim 1, for example, recites an information processing apparatus including a "searching means ... [that] allows [a] second customer to search the non-binding requests for an offer to sell goods submitted by [a] first customer." None of the cited references teaches or suggests at least the claimed searching means.

The Examiner concedes that *Walker '207* does not disclose the claimed searching means (Office Action at p. 5), and *Ojha* fails to cure the deficiencies of *Walker '207*. *Ojha* discloses a "mechanism ... by which negotiations with a number of sellers may be automatically terminated when the buyer reaches an agreement with any other one seller" (*Ojha*, col. 4 lines 31-34). However, even assuming the negotiations in *Ojha* correspond to the claimed "non binding requests," *Ojha* does not disclose that a second buyer can search negotiations for a first buyer. Therefore, *Ojha* does not teach or suggest the claimed "searching means ... [that] allows [a] second customer to search the non-binding requests for an offer to sell goods submitted by [a] first customer."

¹ The Office Action contains a number of statements reflecting characterizations of the related art and the claims. Regardless of whether any such statement is identified herein, Applicant declines to automatically subscribe to any statement or characterization in the Office Action.

Walker '223 fails to cure the deficiencies of *Walker* '207 and *Ojha*. *Walker* '223 discloses "a method and apparatus for an expert seeking to sell his services to more efficiently find a client." *Walker* '223 does not disclose that a first customer can search for requests for expert services submitted by a second customer, and even if *Walker* '223 did include such a disclosure, such a search would be for requests for services, and not goods.

The Examiner alleges that *Walker* '223 teaches the claimed searching means, yet the Examiner has not cited to any portion of *Walker* '223 in making this allegation (Office Action at p. 4). M.P.E.P. § 706.02(j) states, "the examiner should set forth in the Office action: (A) the relevant teachings of the prior art relied upon, preferably with reference to the relevant column or page number(s) and line number(s) where appropriate." *Walker* '223 is 64 pages long, and Applicant has reviewed it carefully and found no teaching or suggestion of the claimed searching means. Should the Examiner maintain the rejection in the next Office Action, the Examiner should identify the pertinent portion(s) of *Walker* '223.

In the "Response to Arguments" section in the Office Action, the Examiner states,

Examiner notes that all three reference cited teaches search engines to search for products or services available to be purchased for all interested buyers. The searching function for list of goods or services provided is cited references (e.g. ... list of available product from sellers with asking price) ... [w]hether the requested information is incorporated in the response[] (shop's response to offer to sell) which is the product itself or the search is for the list of available product and price presented in the list would just a matter of designed choice. What would only be interested to the second buyer is the product and price information that the seller willing to sell. in other words, [t]he first customer's initiated request for an offer to sell good only make sense for the second buyer if the first buyer's request has been responded by the shop with a submit to sell good (agree

to sell at buyer's requested condition). Therefore, in light of this interpretation, the cited prior art meet the claimed limitation.

(Office Action at pp. 2-3).

The Examiner's interpretation of the cited art fails to meet the standard for a *prima facie* case of obviousness. Notwithstanding the Examiner's allegations as to the claimed subject matter being a design choice, the Examiner has not cited any prior art that teaches or suggests each and every element of the claims, in particular the claimed searching means. The cited references contain no such teaching or suggestion. Therefore, no *prima facie* case of obviousness has been established with respect to claim 1.

Moreover, the Examiner's position appears to be that the claimed "searching means ... [that] allows [a] second customer to search the non-binding requests for an offer to sell goods submitted by [a] first customer" constitutes a design choice because a second user would only be interested in the product and price information at which a seller is willing to sell, and this information is available to buyers in the cited references (Office Action at p. 3). However, it is not true that customers are necessarily only interested in the product and price information at which a given seller is willing to sell. For example, a customer might want to search requests for offers by other users in order to gauge demand for a particular item by other customers, and to see what other customers are willing to pay for a particular item. Further, a customer might wish to see information such as quantities, dates, trade names, sex or age of other customers, comments, or other pertinent information regarding a request for an offer to sell goods,

as mentioned, for example, at p. 8 of Applicant's specification and in Figure 4. Thus, the claimed searching means is more than simply a design choice.

Although of different scope than claim 1, independent claim 7 is allowable for at least the same reasons as claim 1. Claims 14-19 and 27 depend from claim 1, and claims 21-26 and 28 depend from claim 7.

Because the cited references fail to teach or suggest each and every claim element recited by claims 1, 7, 14-19, and 21-28, no *prima facie* case of obviousness has been established. Applicant therefore requests the Examiner to withdraw the rejection of these claims under 35 U.S.C. § 103(a).

In view of the foregoing remarks, Applicant respectfully requests reconsideration and reexamination of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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